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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/576,772	05/23/2000	Martin E. Fermann	A7696	4224

7590 09/14/2004
Sughrue Mion Zinn Macpeak & Seas PLLC
2100 Pennsylvania Avenue NW
Washington, DC 20037-3212

EXAMINER

MENEFEE, JAMES A

ART UNIT	PAPER NUMBER
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2828

DATE MAILED: 09/14/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

09/576,772

Applicant(s)

FERMANN ET AL.

Examiner

James A. Menefee

Art Unit

2828

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 26 August 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☒ The period for reply expires 4 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
 - (b) ☐ they raise the issue of new matter (see Note below);
 - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____.

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: see attached.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☒ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: 1,4-29 and 58.

Claim(s) objected to: _____.

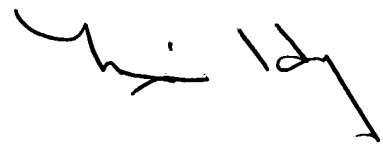
Claim(s) rejected: 59 and 60.Claim(s) withdrawn from consideration: 30-57 and 62-74.

8. ☐ The drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.
10. ☐ Other: _____

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Continuation of 5: Applicant argues that the term “parabolic pulse” is a term of art, and thus must be interpreted to mean the temporal shape of the pulse, rather than the spectral shape. A search of the U.S. Patents database, the IEEE database, and the Wiley Encyclopedia of Electrical and Electronics Engineering yields less than 25 results for the term “parabolic pulse.” Thus, absent any further evidence other than applicant’s arguments, there is little evidence to support that a “parabolic pulse” is a term of art that must be given a particular meaning. Absent this, then the examiner must give the term its broadest reasonable interpretation. The spectral representation in Fig. 5 clearly approximates a parabola, and thus it may be interpreted that the pulse is a “parabolic pulse.”

Note that the examiner concedes that if the claims were to require the temporal shape to be parabolic then the Fermann reference, which is silent as to this feature, could no longer be used to anticipate the claims. This would require either an amendment to the claims (which would possibly require further consideration/search) or objective evidence other than arguments of counsel.



MINSUN OH HARVEY
PRIMARY EXAMINER